

the event the motion is denied, move for dismissal on the ground that upon the law and the facts the party in the position of plaintiff has shown no right to relief. The party in the position of plaintiff shall have fifteen days from the date of service of the motion to file a brief in response to the motion. The Trademark Trial and Appeal Board may render judgment against the party in the position of plaintiff, or the Board may decline to render judgment until all of the evidence is in the record. If judgment is not rendered, testimony periods will be reset for the party in the position of defendant and for rebuttal.

(c) A motion filed under paragraph (a) or (b) of this section must be filed before the opening of the testimony period of the moving party, except that the Trademark Trial and Appeal Board may in its discretion grant a motion under paragraph (a) even if the motion was filed after the opening of the testimony period of the moving party.

[48 FR 23141, May 23, 1983, as amended at 51 FR 28710, Aug. 11, 1986]

§ 2.133 Amendment of application or registration during proceedings.

(a) An application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.

(b) If, in an inter partes proceeding, the Trademark Trial and Appeal Board finds that a party whose application or registration is the subject of the proceeding is not entitled to registration in the absence of a specified restriction to the involved application or registration, the Trademark Trial and Appeal Board will allow the party time in which to file a request that the application or registration be amended to conform to the findings of the Trademark Trial and Appeal Board, failing which judgment will be entered against the party.

(c) Geographic limitations will be considered and determined by the Trademark Trial and Appeal Board only in the context of a concurrent use registration proceeding.

(d) A plaintiff's pleaded registration will not be restricted in the absence of a counterclaim to cancel the registration in whole or in part, except that a counterclaim need not be filed if the registration is the subject of another proceeding between the same parties or anyone in privity therewith.

[54 FR 37597, Sept. 11, 1989]

§ 2.134 Surrender or voluntary cancellation of registration.

(a) After the commencement of a cancellation proceeding, if the respondent applies for cancellation of the involved registration under section 7(e) of the Act of 1946 without the written consent of every adverse party to the proceeding, judgment shall be entered against the respondent. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

(b) After the commencement of a cancellation proceeding, if it comes to the attention of the Trademark Trial and Appeal Board that the respondent has permitted his involved registration to be cancelled under section 8 of the Act of 1946 or has failed to renew his involved registration under section 9 of the Act of 1946, an order may be issued allowing respondent until a set time, not less than fifteen days, in which to show cause why such cancellation or failure to renew should not be deemed to be the equivalent of a cancellation by request of respondent without the consent of the adverse party and should not result in entry of judgment against respondent as provided by paragraph (a) of this section. In the absence of a showing of good and sufficient cause, judgment may be entered against respondent as provided by paragraph (a) of this section.

[48 FR 23141, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989; 63 FR 48100, Sept. 9, 1998]

§ 2.135 Abandonment of application or mark.

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to